

# HOUSE BILL REPORT

## 2SSB 6319

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### As Passed House - Amended:

March 2, 2006

**Title:** An act relating to failure to register as a sex offender.

**Brief Description:** Changing provisions for sex offender registration.

**Sponsors:** By Senate Committee on Ways & Means (originally sponsored by Senators Regala, Brandland, Stevens, Kline, Weinstein, Doumit, Carrell, Keiser, Rockefeller, Berkey, Haugen, Fairley, Spanel, Pflug, Sheldon, Rasmussen, McAuliffe, Shin, Roach and Benton).

### Brief History:

#### Committee Activity:

Criminal Justice & Corrections: 2/17/06, 2/23/06 [DP];

Appropriations: 2/25/06, 2/27/06 [DPA].

#### Floor Activity:

Passed House - Amended: 3/2/06, 98-0.

<p style="text-align: center;"><b>Brief Summary of Second Substitute Bill</b> <b>(As Amended by House)</b></p> <ul style="list-style-type: none"><li>• Clarifies that any knowing non-compliance with the registration statute constitutes Failure to Register as a Sex Offender.</li><li>• Increases the penalty for Failure to Register as a Sex Offender.</li></ul>
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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Pearson, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kirby, Strow and Williams.

**Staff:** Jim Morishima (786-7191).

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### HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass as amended. Signed by 30 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Armstrong, Bailey, Buri, Chandler, Clements, Cody, Darneille, Dunshee, Grant, Haigh, Hinkle, Hunter,

Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Miloscia, Pearson, Priest, Schual-Berke, P. Sullivan, Talcott and Walsh.

**Staff:** Bernard Dean (786-7130).

**Background:**

I. Failure to Register as a Sex Offender

In 1990, the Legislature enacted the Community Protection Act, which, among other things, created a sex offender registry in Washington. A sex or kidnapping offender must register with the county sheriff in the county where he or she resides within certain specified deadlines. The offender must notify the sheriff when he or she enrolls in a public or private school, enrolls in an institution of higher education, changes addresses or becomes homeless. The offender must also notify the county sheriff and the state patrol if he or she changes his or her name.

A sex offender who knowingly fails to register or notify the county sheriff, or who changes his or her name without notifying the county sheriff or the state patrol, is guilty of a crime. The offender is guilty of an "unranked" class C felony (zero-12 months in jail, a fine of up to \$10,000, or both) if the sex offense that caused the person to register was a felony. The person is guilty of a gross misdemeanor (zero-12 months in jail, a fine of up to \$5,000, or both) if the sex offense that caused the person to register was a misdemeanor or a gross misdemeanor. The crime is a "sex offense" for purpose of criminal sentencing.

II. Community Custody

"Community custody" refers to the portion of an offender's sentence spent in the community under the supervision of the Department of Corrections. When sentencing an offender for a sex offense, a court must sentence the offender to a term of community custody of 36 - 48 months if the offender's term of incarceration is over one year. If the offender's term of incarceration is one year or less, the court may sentence the offender to a term of community custody of up to 12 months.

III. Triple Scoring

When an offender is convicted of a "ranked" felony, i.e., a felony that has been assigned a seriousness level, a court generally must sentence the offender to a term within a standard range. The standard range is determined using a grid with the seriousness level of the crime on the vertical axis and the offender's criminal history (known as "offender score") on the horizontal axis.

For purposes of calculating an offender's offender score, each prior felony in his or her criminal history is generally counted as one point. However, special scoring rules exist for certain types of crimes. For example, when an offender is convicted of a ranked felony sex offense, each prior sex offense in his or her criminal history is counted as three points, instead of one.

## **Summary of Amended Bill:**

### I. Failure to Register as a Sex Offender

It is clarified, for sex offenders, that any knowing non-compliance with the registration statute constitutes Failure to Register as a Sex Offender. Second and subsequent convictions for the offense are ranked at seriousness level II, which would result in a mandatory prison term.

### II. Community Custody

A court must impose a mandatory term of community custody for a first conviction for Failure to Register as a Sex Offender. Second and subsequent convictions for the offense will also carry a mandatory term of community custody.

### III. Triple Scoring

For second and subsequent convictions for Failure to Register as a Sex Offender, prior convictions for Failure to Register as a Sex Offender are counted as one point, instead of three.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed, except for section 2, which, because of prior double amendments, takes effect September 1, 2006. However, sections 3 and 4 relating to increasing the penalty for failing to register as a sex offender, are null and void unless funded in the budget.

**Testimony For:** (Criminal Justice & Corrections) Failure to register as a sex offender is a very serious crime. Offenders who fail to register are twice as likely to re-offend as other offenders. Under the current law, the penalty for failing to register is always zero-12 months in jail. This means it is impossible to send repeat violators to prison. This bill increases the penalty for the crime so that repeat offenders can be sent to prison. It also requires community custody for a first-time offender, which lets the offender know that the crime is a serious one. The registration statute can be violated in many ways, but the statute states that only certain conduct is a violation. This bill clarifies that any violation of the registration statute is a crime.

(Concerns) The provisions that state that any violation of the registration statute is a crime may make the statute unconstitutionally vague. Offenders will not have fair notice of what conduct is illegal. The behavior that exposes an offender to criminal liability should be listed specifically. The language in the existing law is clearer and easier to enforce.

**Testimony For:** (Appropriations) This bill came forward from a task force that we had this summer. The task force worked with local experts, local enforcement officials, and other interested parties. to make recommendations regarding concerns about sex offenders failing to register, and the fact that failing to register has no penalty. The WSIPP report tells us that those offenders who fail to register are more likely to re-offend. Failing to register needs to be a

serious offense. In this bill, the first time you fail, the penalty is unchanged, but if you fail a second time or more, the penalty is jail time. The fiscal note includes some duplicate numbers. I question the fiscal note. First, the bill would have a deterrent effect. Also, some folks fail to register intentionally and are out of state, and we are unlikely to find all of them and incarcerate all of them, so I would question the fiscal note having such a large number of extra prison beds as one of its assumptions. The cost of not implementing this bill on behalf of our citizens is more than the cost of doing it.

**Testimony Against:** (Criminal Justice & Corrections) None.

**Testimony Against:** (Appropriations) None.

**Persons Testifying:** (Criminal Justice & Corrections) (In support) Senator Regala, prime sponsor; and Tom McBride, Washington Association of Prosecuting Attorneys.

(Concerns) Todd Maybrown, Washington Association of Criminal Defense Lawyers.

**Persons Testifying:** (Appropriations) Senator Regala, prime sponsor.

**Persons Signed In To Testify But Not Testifying:** (Criminal Justice & Corrections) None.

**Persons Signed In To Testify But Not Testifying:** (Appropriations) None.